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19 Respondents cite to both the Rules Governing Section 2254 Cases in the United States	
20 District Courts (hereinafter Habeas Corpus Rules) and the Federal Rules of Civil Procedure in	
21 arguing that Adams's request for an evidentiary hearing is improper and must be struck. Rather t	hon
impose mandatory obligations on this court, however, the procedural provisions relied upon by the	
respondents are, for the most part, discretionary in nature. <i>See</i> , <i>e.g.</i> , Fed. R. Civ. P. 12(f) (using t	
word "may" when referring to the court striking material from the record). Moreover, the Supren	
25 Court has recognized that, because of the unique nature of habeas proceedings, federal courts are	10
26 allowed some flexibility in "fashion[ing] appropriate modes of procedure" with respect to the	

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adjudication of habeas cases. Harris v. Nelson, 394 U.S. 286, 299 (1969). Accordingly, neither the Habeas Corpus Rules nor the Federal Rules of Civil Procedure provide compelling grounds to grant respondents' motion.

Respondents also claim that, by including his request for an evidentiary hearing within his reply, Adams has effectively deprived the respondents of the opportunity to oppose the request without first obtaining permission from this court. Respondents appear to have overlooked the scheduling order that, despite having been entered back in May of 1999, still governs these proceedings. Docket #21. That order provides the respondents with the opportunity to file a response to both Adams's reply and his request for an evidentiary hearing. *Id.*, p. 2. And, while the order also provides that a request for an evidentiary hearing be filed as separate motion concurrent with the traverse, this court sees little point to adding further delay to these proceeding by requiring Adams to formulate his request into a separate filing.

IT IS THEREFORE ORDERED that respondents' motion to strike (docket #227) is DENIED.

DATED: January 29, 2009

UNITED STATES DISTRICT JUDGE

¹ Until recently, the petitioner's response to the respondent's answer was commonly referred to as a "traverse." In 2004, Rule 5 of the Habeas Corpus Rules was amended so that the rule now uses the more general term "reply." See Advisory Committee Notes to Rule 5, Habeas Corpus Rules This court used the term "traverse" in the 1999 scheduling order.